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April 26, 2012

## BY ELECTRONIC COMMENT FILING SYSTEM

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12<sup>th</sup> Street, SW Washington, D.C. 20554

Re: Ex Parte Notice – In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless ("Verizon") and SpectrumCo LLC ("SpectrumCo") For Consent To Assign Licenses; Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC ("Cox") For Consent To Assign Licenses, WT Docket No. 12-4

Dear Ms. Dortch:

On April 24, 2012, Mark A. Stachiw, Vice Chairman, Secretary & General Counsel of MetroPCS Communications, Inc. ("MetroPCS"), along with Carl W. Northrop and Jessica DeSimone of Telecommunications Law Professionals PLLC ("TLP"), met with Joel Rabinovitz, Neil Dellar, Marius Schwartz, Paul Murray, Tom Peters, Jim Bird, Susan Singer, Virginia Metallo, Sandra Danner, Melissa Tye, Jim Schlichting and Rick Kaplan of the Federal Communications Commission ("FCC" or "Commission") to discuss the above-referenced transactions (the "Transactions"). The presentation was consistent with the filings MetroPCS previously has made in this docketed proceeding, as supplemented below.

MetroPCS applauded the Commission for seeking further information from the Applicants, particularly the information directly related to the early concerns that MetroPCS raised when the applications were filed: spectrum warehousing by Verizon and possible trafficking by SpectrumCo and Cox. MetroPCS indicated that, due to the manner in which the Applicants' responses were filed over a period of time, the volume of the material and the varied formats of the submissions, MetroPCS had not yet completed its review of the material and planned to comment in due course.

The substantive discussion in the meeting focused on the following topics, as set forth in detail below: (1) Verizon's proposed 700 MHz spectrum sale; (2) Possible conditions for approval of the transaction; and (3) Speculation and trafficking issues involving the cable companies.

## Verizon's 700 MHz Spectrum Sale

MetroPCS indicated that, properly viewed, Verizon's announcement that it planned to conduct a private auction and, perhaps, sell all of its 700 MHz A and B Spectrum, should be taken as a clear admission that Verizon has more spectrum than it needs to provide its existing and proposed services. In effect, Verizon has conceded the point made by MetroPCS and others that allowing Verizon to acquire the SpectrumCo, Cox and Leap spectrum would indeed result in the warehousing of spectrum in a manner that is contrary to the public interest. MetroPCS emphasized that such warehousing was particularly pernicious given the current spectrum shortage and the need by all carriers for additional spectrum.

Because of the critical need for additional broadband spectrum in the market, the proposed divestiture of 700 MHz spectrum by Verizon, on its face, would be better than allowing Verizon to continue to hoard the undeveloped 700 MHz spectrum while simultaneously acquiring AWS spectrum from SpectrumCo, Cox and Leap. However, MetroPCS indicated that there is "less here than meets the eye" due to the facts and circumstances surrounding the proposed sale. First, the 700 MHz A Block spectrum that has been offered for sale is largely encumbered due to the need to provide interference protection to incumbent TV Channel 51 licensees. The preliminary MetroPCS analysis indicates that all of the major 700 MHz A Block markets where the spectrum crisis is most dire have incumbent Channel 51 operations that must be protected. MetroPCS itself holds a 700 MHz A Block license for the Boston market and its experience indicates that resolving a Channel 51 interference problem by voluntary agreement is difficult if not impossible. This means that the sale proposed by Verizon will not provide meaningful near term spectrum relief for third parties. In addition, the departure of Verizon from the 700 MHz A block would remove a powerful player who might have sufficient market power to help drive a solution to the Channel 51 incumbency problem.

Second, the 700 MHz A and B block channels are facing near term interim construction deadlines that make the 700 MHz spectrum a risky proposition for any potential buyer. Even assuming a best case timetable, the pre-conditions being imposed by Verizon result in a timetable where the buying carrier will likely only have a few months to meet the construction deadlines in June 2013. This will be especially difficult in certain areas which present severe zoning challenges, like California, that will add additional time-consuming burdens to meeting the construction deadline.

Indeed, Verizon itself has approached the Commission and discussed the possible need for an extension of the build-out deadline particularly with respect to the 700 MHz A Block due to the Channel 51 problem. In effect, the licenses that Verizon is offering are wasting assets. MetroPCS and other carriers who are in the market for spectrum would be reluctant to buy licenses on a short fuse, which means that no public interest benefits would result from the proposed sale.

Third, Verizon has placed a number of conditions on the proposed sale that could make the offer illusory. Specifically, Verizon has made clear that the sale will only proceed on the conditions that the SpectrumCo/Cox Transactions are approved, and that its private auction brings a suitable price in relation

<sup>&</sup>lt;sup>1</sup> Press Release, Verizon, Verizon Wireless to Conduct Spectrum License Sale (Apr. 18, 2012) <a href="http://newscenter.verizon.com/press-releases/verizon/2012/verizon-wireless-to-conduct.html">http://newscenter.verizon.com/press-releases/verizon/2012/verizon-wireless-to-conduct.html</a>.

to what Verizon paid for the divested spectrum. Either or both of these conditions could fail. Given general economic conditions, the lack of tangible progress that any 700 MHz A Block licensee has made in addressing – let alone resolving – the Channel 51 problem, and the passage of time which results in a materially shortened construction deadline, the offered licenses may not attract many interested buyers and thus may not sell at a suitable price for Verizon. In short, since potential buyers are aware that the spectrum comes with severe infirmities, it may not be worth the same amount that Verizon paid during Auction 73 in 2008, and will likely be sold at a lower price.

Fourth, MetroPCS expressed concern that the proposed divestiture could actually exacerbate the growing wireless market concentration rather than alleviate it. MetroPCS noted that AT&T is a major holder of 700 MHz B Block spectrum and one of the few carriers with sufficient existing infrastructure nationwide to complete construction of a newly acquired 700 MHz license in a very short timeframe and the financial means to buy all the spectrum. This makes AT&T, which already signaled that it is in the market for additional spectrum by trying to acquire T-Mobile, a logical buyer of the spectrum Verizon proposes to divest. In that case, the proposal sale would only further cement the wireless duopoly market structure about which MetroPCS and others have expressed concern. MetroPCS indicated that it would much prefer a divestiture mechanism in which any spectrum Verizon is to divest ends up in the hands of the Commission to be re-auctioned under rules and conditions that have been designed to foster the meaningful participation of a diverse group of carriers, not just the largest incumbents.

MetroPCS indicated that most of its concerns over the proposed divestiture would be resolved if Verizon was obligated to divest equivalent amounts of AWS spectrum rather than its 700 MHz spectrum. AWS spectrum, unlike 700 MHz A Block spectrum, is currently useable. MetroPCS further confirmed that, if it was able to acquire AWS spectrum, it would be immediately put to use in the MetroPCS LTE network as the handsets and equipment are readily available.

If, nonetheless, the Commission was inclined to consider the proposed 700 MHz Verizon divestiture as a relevant factor in its review of the Transaction, the Commission would need to (1) revise the interim 700 MHz interim construction deadline, not just for buyers of the Verizon spectrum, but for all 700 MHz A Block and B Block licensees; and (2) take affirmative steps to resolve the Channel 51 interference problem in the near term. Notably these steps would benefit, not harm, Verizon by increasing the value of the assets it is proposing to sell and thereby improve the possibility that it would recoup its initial investment. In addition, in order to assure that any sale serves to address the concerns raised by the Transactions, it would need to be conducted in advance of a closing of the Transactions, not after, so the Commission could ascertain whether competition would be advanced and the public interest would be served.

## Roaming Rate Conditions for Approval of the Transactions

MetroPCS also discussed the lack of success it has had in negotiating commercially reasonable roaming rates with Verizon and expressed concern that the Transactions will eliminate four potential wireless competitors in the industry who otherwise could become potential roaming partners of MetroPCS. MetroPCS also noted that allowing Verizon to add to its warehouse of spectrum will eliminate one of its few remaining incentives to enter into commercially reasonable roaming agreements since, in the past, Verizon has been known to offer roaming as an inducement to encourage others to sell their {00024159;v2}

spectrum. Therefore, if the Transactions are approved, the Commission must act to ensure that Verizon offers commercially reasonable roaming rates. In the absence of a willingness of Verizon to offer commercially reasonable nationwide roaming arrangements to others, the Commission should look to the wholesale rates that Verizon is offering to the cable companies in the reseller agreements that accompany the Transactions. MetroPCS discussed the comparability of the cost elements that would go into setting a cost-based reseller rate and a reasonable roaming rate, and urged the Commission to adopt the reseller rate as an appropriate surrogate for a commercially reasonable rate, and require Verizon to offer roaming to others on no less favorable terms. MetroPCS mentioned in particular the difficulties it is having in trying to reach a roaming agreement with Verizon covering data services and LTE.

## The Speculation and Trafficking Issues Involving the Cable Companies

MetroPCS reiterated its view that spectrum speculation and trafficking remain a significant unresolved concern in this proceeding. MetroPCS noted that the steps reported by SpectrumCo to develop its AWS spectrum amounted to nothing more than "going through the motions" and did not serve to adequately rebut the public admissions that SpectrumCo never had any intention of constructing and operating a network in the public interest. MetroPCS also observed that, when a license holder is accused of trafficking, the most common defense is "changed circumstances." Here, though, no adequate showing of changed circumstances has been made.

MetroPCS further stressed that the AWS auction was a particularly important auction at a critical time in the development of the industry and that the entire industry would be much more competitive and the public would be much better served had SpectrumCo not acquired and then failed to develop such a significant set of licenses. This being the case, the Commission must take the trafficking claim seriously, if for no other reason than to send a message to bidders in future auctions that speculation will not be tolerated.

Any questions regarding this notice should be directed to the undersigned.

Sincerely,

/s/ Carl W. Northrop

Carl W. Northrop of TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

cc (via email): Joel Rabinovitz

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